

or may vary with the time of year. Communities in different regions of the country keep business hours based on local factors such as population, demographics, income levels, peak demand periods, seasonal employment and fluctuations in retail activity. The definition accommodates these different situations by permitting cable systems to be open less than 40 hours per week if most similar businesses in the community also are open fewer than 40 hours a week.

- b) Normal Operating Conditions: The term "normal operating conditions" includes those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system. The definition of normal operating conditions is relevant in assessing compliance with telephone answer time, installations, service calls, and repair of service interruptions.

42. Most commenters agree that it is not reasonable to expect a cable operator to meet customer service standards outside of normal operating conditions, such as during an earthquake, flood, or other natural disaster. The commenters disagree, however, on how the term "normal operating conditions" should be defined. The cable operators contend that such things as rate increases, enhancements or upgrades of the system, major changes in billing format, and exceptional pay-per-view offerings should be excluded from "normal operating conditions."⁹⁴ The local governments, on the other hand, argue that those types of situations are within the control of the cable operator and thus should be considered to be events that occur in the normal course of business. Further, they note that compliance requirements -- the NCTA standards must only be met 90 percent of the time -- can allow for some instances when cable operators cannot predict response to such things as pay-per-view events.⁹⁵

⁹⁴ Continental maintains that strict compliance with the standards should not be required for abnormal conditions that are within the "partial" control of the operator, e.g., where the operator may be unable either to predict accurately the increased level of demand that may ensue, or to hire and train employees for just a few hours of short peak demand periods. Continental comments at 22.

⁹⁵ See, e.g., C-TEC Communities reply comments at 9; St. Louis reply comments at 15-16.

43. We agree with the local governments that such things as special promotions, normal system maintenance and upgrades are within the control of the cable operator and should not, therefore, serve as an excuse for not complying with Federal customer service standards. Because these events are generally scheduled by the cable operator (e.g., maintenance) or the operator knows the schedule reasonably well in advance of the event (e.g., special promotions or pay-per-view events), we do not find it unreasonable to require the cable operator to adjust its staffing to maintain compliance with the customer service standards during those periods. As the local governments note, unusually high response to a pay-per-view event or other unforeseen occurrences can be accounted for by the leeway provided in the compliance requirements in the Federal standards we establish herein, as described below. We note that the examples we list in the definition of "normal operating conditions" are not meant to be all-inclusive and may not cover other events within the operator's control.

- c) Service Interruption: A "service interruption" means the loss of picture or sound on one or more channels. The definition of service interruption affects the timing of when the cable operator must respond to a service problem.

44. The cable interests commenting in this proceeding generally define a "service interruption" as a loss of picture on more than one channel.⁹⁶ In its proposed annotation of its standards, NCTA defines this term as "cable off in all television sets in the home."⁹⁷ The definition of this term is significant since, as described below, a cable operator will be required to respond more quickly to a "service interruption" than other service problems. The local governments argue that loss of sound and/or picture on even one channel should be defined as⁹⁸ "service interruption" which requires prompt attention.

45. We find that the loss of picture or sound on one or more channels is a "service interruption." A subscriber is entitled to view and hear all of the channels presented over that system for which he or she pays. We do not believe it is reasonable to require a subscriber to lose the picture on more than one channel before the cable operator must take quick action to rectify a problem. We also believe that the sound portion of a channel is necessary for proper viewing and it is not unreasonable to require a cable operator to correct the loss of sound promptly.

⁹⁶ See e.g., TCI comments at 13.

⁹⁷ NCTA comments at 14.

⁹⁸ See NATOA proposed standard 5(a), (b), NATOA reply comments, Attachment A.

2. Office Hours and Telephone Availability

- A. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available 24 hours a day, seven days a week.
 - 1. Trained company representatives will be available to respond to telephone inquiries during normal business hours.
 - 2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
- B. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds from when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than ninety percent of the time, measured on a quarterly basis.
- C. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- D. Under normal operating conditions, the caller will receive a busy signal less than three percent of the time.
- E. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

46. Telephone availability. The NCTA standards require that company representatives be available to respond to telephone inquiries Monday through Friday during normal business hours, i.e., 9 am to 5 pm, and during supplemental hours on weekdays and/or weekends, based on community needs. In the Notice we noted that this standard does not reflect the fact that most television viewing occurs in the evening, which has made it difficult for customers to communicate with their local cable operator.⁹⁹ This problem was clearly recognized by the Congress. The legislative history included a discussion of two surveys conducted in the last several years, one by Consumer Reports and the other of cable subscribers in New York City. Both surveys indicated serious customer service problems in this area, finding that subscribers had considerable difficulty

⁹⁹ 7 FCC Rcd at 8644, para. 12.

getting through to their cable operators, received busy signals more than half the time they called, and were placed on hold, in many cases, longer than one minute.¹⁰⁰

47. Consequently, the local governments urge the Commission to go beyond the NCTA standard and require systems to offer extended telephone answering hours, up to 24 hours a day.¹⁰¹ NATOA's proposed standards require that a cable operator maintain phone lines, either staffed or with answering capabilities, so that there is service 24 hours a day.¹⁰² Most of the local governments state that the 24 hour availability can be met with an answering service, with a company representative responding to the emergency calls, such as service interruptions, as promptly as possible and routine calls by the next business day.¹⁰³

48. Cable operators, on the other hand, express concern about the added cost that would be imposed to increase telephone availability.¹⁰⁴ Continental warns that requiring extended telephone hours, where there is not a demonstrated need, is likely not to be cost justified. It alleges that systems would face considerable expense as a result of increased labor costs associated with overtime pay and differentials for night and weekend work.¹⁰⁵

49. As many commenters observe, cable is clearly a 24 hour a day service. Most, if not all, cable networks operate on a 24 hour basis, as do many local television stations carried by cable systems. It is not unreasonable then to assume that subscribers may be watching cable programming 24 hours a day. It is also well documented that most television viewing is done in the evenings. Under these circumstances, we do not think it is unreasonable to require a cable operator to provide telephone availability 24 hours a day.

50. We are cognizant of the costs of keeping company representatives available on a 24 hour a day basis. In most instances, a caller's needs outside of normal business hours can

¹⁰⁰ See House Report at 10; NATOA reply comments at 17. See also, C-TEC Communities reply comments at 5 (complaints of being on hold 20, 30 or 60 minutes.)

¹⁰¹ See, e.g., Miami Beach comments at 4; Attorneys General comments at 7; Fairfax County reply comments at 12; New Jersey Office of Cable Television ("NJOC") reply comments at 7.

¹⁰² NATOA proposed standard 1.(b), NATOA reply comments, Attachment A.

¹⁰³ See, e.g., Attorneys General comments at 7 n. 3; NYSCCT comments at 10.

¹⁰⁴ See, e.g., CATA comments at 9. See generally TCI comments at 5.

¹⁰⁵ Continental comments at 24.

be adequately met by leaving a message and having a company representative returning the call the next business day. Accordingly, we believe that allowing a cable operator to use an answering service, including an answering machine, for the hours outside "normal business hours" strikes a reasonable balance. Indeed, even the smallest system should be able to afford an answering machine to record subscriber calls for response when a company representative retrieves them. Additionally, our rules do not prohibit cable systems from using centralized telephone answering facilities or sharing facilities, as long as the cable operator meets the requirements set forth above.

51. Telephone Answer Time. The NCTA standards require telephone answer time, including wait time and the time to transfer the call, not to exceed 30 seconds. Many commenters state that this time could be increased.¹⁰⁶ NATOA's proposed standards, for example, provide for a separate period of up to 30 seconds to transfer a call.¹⁰⁷ Continental recommends that answer time exclude transfer time.¹⁰⁸

52. We are concerned that including the time it takes a caller to explain what service is needed in the 30 second requirement such as that proposed by NCTA could cause company representatives to cut off callers or misdirect calls in order to meet the requirement. The Federal standard thus clarifies that the time a caller takes to describe his question or problem is not to be included in the time requirement. Rather, the Federal standard requires a call to be answered within 30 seconds, but allows a separate 30 second period in which to transfer the call after the company representative has ascertained the service desired by the caller.

53. Telephone response measurements. The NCTA standards require that the telephone answering requirement be met no less than 90 percent of the time on an annual basis. While no arguments were raised against the 90 percent compliance requirement, several local governments complain that measuring compliance on an annual basis can allow for major customer service problems to be statistically overlooked.¹⁰⁹ They

¹⁰⁶ Northwest comments at 3; St. Louis reply comments at 8.

¹⁰⁷ NATOA proposed standards, 1.(c)(iii), NATOA reply comments, Attachment A.

¹⁰⁸ Continental comments at 25. See also NCTA comments at 11 (NCTA reports that 20% of customer's needs, such as accounting and billing inquiries, can be answered by an Automated Response Unit (ARU). Time spent working through an ARU menu would not count against response time).

¹⁰⁹ See, e.g., Miami Beach comments at 4.

recommend that compliance be measured on a monthly basis.¹¹⁰
NATO's proposed standards would require cable operators to file
quarterly compliance reports.¹¹¹

54. We believe that an annual compliance measurement is too long. As noted by several commenters, use of that time period would allow major lapses in customer service to be statistically lost and would not provide timely enough information to franchising authorities. On the other hand, we are concerned that a monthly measurement period would place undue administrative burdens on cable operators without commensurate benefit. We believe that the use of a quarterly compliance measurement period will provide the franchising authority with adequate and timely information on a cable operator's compliance with the standards without imposing an unnecessary burden on the cable operator.

55. Measuring Telephone Performance. Because it typically involves use of expensive equipment, measuring compliance with the telephone response standards clearly could impose a considerable expense on cable systems. The NCTA standards note that requiring systems with fewer than 10,000 subscribers to make systematic measurement of compliance would not be cost effective. Continental points out that measuring and documenting compliance could require many cable systems to purchase costly hardware, such as PBX equipment, which ranges from \$50,000 to over \$200,000, and/or computer hardware and software ranging from \$13,000 to \$60,000.¹¹² Cole, Raywid & Braverman note that the cable industry has invested significantly in the record keeping apparatus which measures compliance with the NCTA standards and to change those standards, even slightly, could impose significant capital equipment costs without a corresponding effect on customer service.¹¹³

56. We are cognizant of the significant costs of equipment required to measure compliance with the Federal standards. Accordingly, in order to prevent imposing an unreasonable economic burden on cable systems, our standards will not require the use of specific equipment to measure the answering and hold time parameters, unless a record of complaints emerges indicating a clear failure to comply. In all other instances, we require

¹¹⁰ See, e.g., Miami Beach comments at 5; Northwest comments at 5.

¹¹¹ NATO's proposed standards, 1.(g), NATO's reply comments, Attachment A.

¹¹² Continental comments at 12 and 26. See also Viacom comments at 10-11; CRB comments at 7-8.

¹¹³ CRB Comments at 9.

cable systems to use their best efforts to document, and, if necessary, to demonstrate compliance with the standard. Further, we advise cable operators to maintain sufficient records concerning all measurement requirements, so that compliance could be demonstrated if challenged.

3. Installations, Outages, and Service Calls

Under normal operating conditions, each of the following four standards will be met no less than 95 percent of the time as measured on a quarterly basis:

- A. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
- B. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
- C. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- D. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- E. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

57. Service Calls/Outages. The NCTA standards require the cable operator to respond to service interruptions promptly, but no later than within 24 hours, and other service problems within 36 hours during the normal work week. NATOA argues that these time periods are too long, and recommends, instead, that a cable operator correct service interruptions within 12 hours. NATOA further recommends that all reception and other service problems be acknowledged within 24 hours, that all off premises repairs be

completed within 24 hours and that repairs involving a visit to the subscriber's premises be completed in 48 hours.¹¹⁴

58. We believe that it is reasonable to require a cable operator to begin working on a service interruption promptly, but no later than 24 hours after it is notified that a problem exists. We use the phrase "working on" to clarify that a cable operator must do more than merely acknowledge the problem during that time frame, but rather must take positive steps toward rectifying the problem. We also find it reasonable to require the cable operator to begin actions to correct other service problems the next business day after being notified of the service problem. We decline to set time frames in which work must be completed, as NATOA suggests. The amount of time required to fix a service problem will vary greatly and we have no basis to establish a certain time for its completion. We are also concerned that establishing time periods to complete work may force a cable operator to take shortcuts to meet inflexible deadlines which could result in increased service problems in the future.

59. Appointment Windows. The NCTA standards provide that appointments be scheduled for "morning" or "afternoon" or "all day during normal business hours." Most commenters have no problem with the NCTA requirements that appointments be scheduled in the morning or afternoon, but the local governments argue that the "all day" option is too broad and vague.¹¹⁵ The West Michigan Communities request that "first call of the day" or "call to meet" be included in our customer service standards.¹¹⁶

60. While it would be preferable to schedule appointments for a specific time, we realize that it is difficult at best for an installer or technician to estimate the time a service call will take until he or she is at the customer's premises. As a result, determining when the installer or technician will be able to meet with a subsequent customer can only be accomplished according to a general time frame. Consequently, we find that a four hour block for scheduling appointments with cable customers is reasonable. That block may be the same as "morning" or "afternoon," but need not be. It could, for example, be 10 am to 2 pm. We also agree with numerous commenters that an "all day" appointment window is too vague and unfair to consumers who must stay at home the entire day waiting for the installer or technician. While "first call of the day" or "call to meet" are good concepts, we do not believe they need be included in our

¹¹⁴ NATOA reply comments at 23.

¹¹⁵ MGB Associates comments at 3; Bayonne comments at 7.

¹¹⁶ West Michigan Communities comments at 14-15.

standards. This does not, of course, preclude a cable operator from using them.

61. Missed Appointments. The NCTA standards state that an attempt will be made to contact the customer if the installer or technician is running late. The local governments argue that this standard is too vague and want a Federal standard to include a deadline past which appointments cannot be cancelled without penalty. The most often cited deadline is 24 hours in advance.¹¹⁷

62. We note that subscribers usually must adjust their schedules in order to meet an installer or technician at their home. This often requires the subscriber to take time off from work. While it is often difficult for the operator to know how long an individual service call will take, the operator has the flexibility to schedule service calls to ensure that technicians have adequate time to complete a project before the scheduled time of another service call. This is especially true where cable operators use a four hour time block to schedule appointments. Consequently, we believe it is reasonable to require a cable operator to cancel an appointment by the close of business on the business day prior to the scheduled appointment. This would allow the subscriber an opportunity to reschedule his or her day in light of the cancellation. Likewise, we conclude it is reasonable to require an installer or technician to contact the customer if the installer or technician is running late (*i.e.*, will not meet the specified appointment time) and to reschedule the appointment to a time convenient for the subscriber. We stress that this latter contact is an independent obligation, and will not necessarily excuse a missed appointment.

63. Credits/free installation. The NCTA standards do not contain any requirement that subscribers be compensated for service interruptions or missed service appointments. The local governments support the use of some form of credits or free installation to penalize the cable operator for failure to comply with customer service standards.¹¹⁸ NATOA recommends that if a cable operator has failed to correct a service problem within the requisite time period, thereby leaving the customer without service, the cable operator should be required to provide the subscriber a credit of free cable service.¹¹⁹

¹¹⁷ See, *e.g.*, Fairfax County reply comments at 13; Bayonne comments at 7.

¹¹⁸ See, *e.g.*, MFA comments at 15; NJOCT comments at 7; Attorneys General comments at 9; NYSCCT comments at 11.

¹¹⁹ NATOA recommends that a cable operator give a credit for 24 hours of free cable service for every service outage lasting for more than four hours in any 24 hour period, or 1/30 of the monthly bill. It also recommends that the cable operator give a credit for one free month's cable service for missing a scheduled appointment.

64. As we discussed in dealing with remedies for non-compliance with our customer service requirements, we do not believe it is necessary or appropriate for the Commission to establish refund or penalty guidelines.¹²⁰ As NATOA noted in its comments, many franchising authorities already provide for credits for failure to correct service problems within certain time periods,¹²¹ and there is no indication that such practices require Federal intervention. Moreover, as noted above, local governments will be free to avail themselves of reasonable remedies to assure compliance with the customer service standards, which may involve ordering credits or refunds to the system's subscribers.¹²² We also do not preempt in any way any existing penalty authority which a franchising authority may have through the franchise agreement or local or state law.

4. Communications, Bills, and Refunds

- A. 1. The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
- a. products and services offered;
 - b. prices and options for programming services and conditions of subscription to programming and other services;
 - c. installation and service maintenance policies;
 - d. instructions on how to use the cable service;
 - e. channel positions of programming carried on the system; and,
 - f. billing and complaint procedures, including address and telephone number of the local franchising authority's cable office.
2. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any

NATOA reply comments at 24-25.

¹²⁰ See para. 21, supra.

¹²¹ NATOA reply comments at 24.

¹²² See para. 21, supra.

significant changes in the other information required by the preceding paragraph.

- B. 1. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- 2. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- C. Refund checks will be issued promptly, but no later than either (i) the customer's next billing cycle following resolution of the request or 30 days whichever is earlier, or (ii) the return of the equipment supplied by the cable operator if service is terminated.
- D. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

65. Bills. The NCTA standards only require that bills be clear, concise and understandable. The local governments complain that this standard is too vague and note that they receive many complaints regarding billing, including "incomprehensible bill formats, inhospitable billing dispute resolution mechanisms, misrepresentation regarding the itemization of franchise fees and impositions of late charges without notice."¹²³ They recommend that the Federal standard require bills to be itemized to list each charge separately and to include the address and phone number for the franchising authority or the office designated to handle cable issues in the locality.¹²⁴ The cable operators oppose such a requirement. For example, Viacom urges the Commission to refrain from adopting a standard billing format or from prescribing particular information on the bill since cable operators are motivated by the market to improve their billing formats by the desire to

¹²³ NATOA reply comments at 28. See also Attorneys General comments at 9 ("Billing practices appear to be the single greatest source of complaints about a cable operator.")

¹²⁴ See, e.g., Miami comments at 7, Montgomery County comments at 2-3; Fairfax County reply comments at 14.

receive prompt payment of subscriber bills and to avoid complaints.¹²⁵

66. The legislative history of the Cable Act of 1992 manifests Congress' perception that billing is a significant problem for many cable customers.¹²⁶ Clearly, this is an area where Congress intended the Federal standards to require cable operators to improve current practices. Further, we do not believe that more than minimal incremental costs will accrue to cable operators to change their bills to include the additional information and present it in a clear, concise fashion. Accordingly, we are adopting a Federal standard that describes the specific information that must be provided to subscribers.¹²⁷ This additional information should help eliminate many subscribers' inquiries to the franchising authority and the cable operator itself regarding billing.

67. Refunds. The NCTA standards require that refund checks must be issued within 45 days following the resolution of a request. The local governments contend that this is too long and propose reducing the period to 30 days.¹²⁸ We believe that a 30 day period is generally used in the business community and would be reasonable for cable operators as well. Likewise, we find it reasonable for the cable operator to include credits for service in the customer's next bill after resolution of the request for credit, such as for a missed service appointment or service interruption.

68. Late Fees. Many local governments complain that cable operators charge a flat late fee which can be equal to well over standard interest rates.¹²⁹ They suggest that a limit be placed on late fees. Options proposed range from specifying a certain percent charge to tying the charge to an index, e.g., prime lending rate plus a fixed rate.¹³⁰ These types of issues are usually dealt with by state or local governments. Consequently, we decline to add this provision in the Federal standards, and

¹²⁵ The Companies joint comments at 11.

¹²⁶ House Report at 34-36; Senate Report at 20-21.

¹²⁷ The customer service standard regarding subscriber notifications is in addition to other notification requirements that are imposed on cable operators by the rules we adopt to implement the 1992 Cable Act in such areas as rate regulation and broadcast signal carriage.

¹²⁸ See, e.g., Miami comments at 7, Attorneys General comments at 11; Dallas comments at 6; St. Louis reply comments at 14.

¹²⁹ See Dade County reply comments at 7.

¹³⁰ See Northwest comments at 3.

instead, recommend that such concern be dealt with through local negotiation or application of local or state consumer protection and customer service laws.

C. Other Standards

69. While Section 632(b) permits the Commission to adopt customer service standards in areas not specified in the statute, we decline to do so at this time.¹³¹ We believe, as we stated in the Notice, that the areas specified in the statute -- office hours and telephone availability; installations, outages and service calls; and communications, bills and refunds -- address the major areas of customer service based on levels of discontent found by Congress which can be handled on a national level.¹³² If there are other areas of concern, such as employee identification, the statute and our rules allow the franchising authority to address those issues. The franchising authority, local or state government is thus free to craft additional requirements which best meet the unique needs of the particular community. Of course, we reserve the right to respond to particular circumstances brought to our attention to ensure that customer service satisfaction is achieved nationwide.

IV. Administrative Procedure Act

70. Adelphia Communications Corporation ("Adelphia") challenges the Commission's proposed action in this proceeding as failing to comply with the notice provisions of the Administrative Procedure Act, 5 U.S.C. Sec. 551 et seq. ("APA"). It states that APA Section 553(b)(3) requires the Commission, when issuing a general notice of proposed rule making, to provide the public with either the terms or substance of a proposed rule or a description of the subjects and issues involved, and that the Notice fails to provide sufficient factual detail and rationale to permit interested parties to comment meaningfully. Specifically, it argues that the Commission has given inadequate notice of the customer service standards it intends to adopt, how such standards will be enforced, the interaction of the proposed Federal standards with State and local laws and existing cable franchise agreements, or any alternative approaches under

¹³¹ USSBA agrees that the FCC should not decide additional customer service issues in this Report and Order but suggests that the FCC may wish to launch a Notice of Inquiry on other customer service issues. USSBA comments at p.3, n.3. In light of our conclusions herein, we believe that the provisions addressed in the statute should provide an adequate framework for the Federal standards we are establishing here. Consequently, we do not feel it is necessary to initiate a Notice of Inquiry at this point. The Cable Act of 1992 provides ample authority to undertake additional rule making in the future, if experience with the instant standards and procedures proves them unsatisfactory.

¹³² 7 FCC Rcd at 8642, note 13.

consideration. Adelphia therefore concludes "that the Commission's ability to promulgate valid regulations on the basis of the [Notice] is limited."¹³³

71. We disagree. The APA requires an agency to give advanced warning of proposed rule making by publishing a notice containing "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. Sec. 553(b)(3). The APA, however, "does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule." California Citizens Band Association v. United States, 375 F.2d 43, 48 (9th Cir. 1967); Spartan Radiocasting Co. v. FCC, 619 F.2d 314 (4th Cir. 1980). Given the statutory constraints involved, we believe the Notice amply articulated the purposes intended to be served by the Commission's action, see paras. 1-4 (referencing Congressional findings and intent as well as this Commission's mandate with respect to customer service) and provided the public an adequate description of the subjects and issues involved, see paras. 4-7 (regarding the establishment, implementation and enforcement customer service standards), paras. 8-16 (specific potential standards), and paras. 17-20 (alternative approaches), including interpretations of statutory terms and tentative conclusions. We thus conclude that the Notice adequately set forth and elicited comment on proposals to implement Section 8 of the Cable Act of 1992. Indeed, extensive comments on these and other issues were in fact submitted. Accordingly, we reject Adelphia's arguments that the Notice did not comply with the requirements of the APA.

V. ADMINISTRATIVE MATTERS

Final Regulatory Flexibility Analysis

72. Pursuant to the Federal Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action: The Commission's goal is to implement Section 8 of the Cable Act of 1992, which concerns customer service standards to be applied to cable operators nationwide.

II. Issues raised in response to the Initial Regulatory Flexibility Analysis: The Chief Counsel for Advocacy of the United States Small Business Administration ("USSBA") took no position on adoption and enforcement issues raised in the Notice. It did, however, urge the Commission to limit the standards to be developed to those specifically enumerated in the statute, and suggested that a later Notice of Inquiry could be launched if it

¹³³ Adelphia comments at 2.

appears that further standards might be appropriate. USSBA also stated that the Commission should establish more than one Federal customer service benchmark. Specifically, it advocated tiering customer service standards based on the size and type of system, then further subdivide categories based on the age of the cable system, and then further classify systems based on the number of subscribers. Once separate tiers have been established, USSBA would not select specific customer service targets, but rather a range of standards from which cable operators and franchising authorities could agree. Although it acknowledges that this type of stratification may be complex, USSBA states that it will work to ensure that comparable type systems meet comparable customer service standards.

II. Significant alternatives considered: USSBA's and other commenting parties' comments concerning small business concerns and alternatives were fully considered in this proceeding. We agreed with USSBA regarding the establishment of customer service standards specifically enumerated in the statute. However, this Report & Order does not accept USSBA's specific arguments concerning the establishment of multiple national standards based on classifications of cable systems. The Commission did, however, consider various alternatives, including USSBA's, in responding to the concerns regarding the impact of these matters on small cable systems. See discussion at paragraphs 11-12, supra.

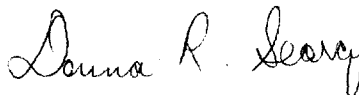
VI. ORDERING CLAUSES

73. Accordingly, IT IS ORDERED that, pursuant to authority contained in and Sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Part 76 of the Commission's Rules, 47 C.F.R. Part 76, IS HEREBY AMENDED as shown in Appendix B.

74. IT IS FURTHER ORDERED THAT the rule changes made herein will become effective July 1, 1993.

75. For further information on this proceeding, contact Alan E. Aronowitz, Mass Media Bureau, (202) 632-7792 or David Krech, Office of Legislative Affairs, (202) 632-6405.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary

APPENDIX A

COMMENTS

Adelphia Communications Corporation
The Attorneys General of Pennsylvania, Massachusetts, New York,
Ohio and Texas
Coalition of Small System Operators
Cole, Raywid & Braverman
Comcast Corporation, Cox Communications, Inc., and Jones
Intercable, Inc.
The Community Antenna Television Association, Inc.
The State of Connecticut, Department of Public Utility Control
Consortium of Small Cable System Operators
Continental Cablevision, Inc.
The City of Dallas, Texas
The City of Kalamazoo, Michigan
The Metropolitan Area Communications Commission
Metropolitan Dade County, Florida
MGB Associates, Inc.
The City of Miami Beach, Florida
Montgomery County, Maryland
Municipal Franchising Authorities
National Association Of Telecommunications Officers and Advisors,
National League of Cities, United States Conference of
Mayors, and the National Association of Counties
National Cable Television Association, Inc.
National Telephone Cooperative Association
New York State Commission on Cable Television
The Northwest Municipal Cable Council
Tele-Communications, Inc.
Time Warner Entertainment Company, L.P.
The Chief Counsel for Advocacy of the United States Small
Business Administration
Viacom International, Inc., Providence Journal Company,
Multivision Cable TV Corp. and Cablevision Industries, Inc.
West Michigan Communities

LATE-FILED OR INFORMAL COMMENTS

The City of Bayonne, New Jersey
Fairfax County, Virginia
The Minnesota Association of Cable Television Administrators

REPLY COMMENTS

Anne Arundel County, Maryland
The City of Cape Coral, Florida
The City of Cincinnati, Ohio
Coalition of Small System Operators
The Community Antenna Television Association, Inc.
Continental Cablevision, Inc.

C-TEC Communities
Five Rural Telephone/Cable Companies
The City of Fort Lauderdale, Florida
GTE Service Corporation
Hillsborough County, Florida
The Intercommunity Cable Regulatory Commission
The City of Kalamazoo, Michigan
The Metropolitan Area Communications Commission
The City of Miami, Florida
National Association Of Telecommunications Officers and Advisors,
National League of Cities, United States Conference of
Mayors, and the National Association of Counties
National Cable Television Association, Inc.
The State of New Jersey, Office of Cable Television
The City of New Orleans, Louisiana
The City of Portland, Oregon
The Rainier Cable Commission
The City of St. Louis, Missouri
The City of San Antonio, Texas
The City of Tallahassee, Florida
Tele-Communications, Inc.
Time Warner Entertainment Company, L.P.
The City of Vancouver and Clark County, Washington
Viacom International, Inc., Providence Journal Company,
Multivision Cable TV Corp. and Cablevision Industries, Inc.

APPENDIX B

Title 47 CFR, Part 76 (Cable Television Service), Subpart H (General Operating Requirements) is amended as follows:

1. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614-615, 623, 632 as amended, 106 Stat. 1460; 47 U.S.C. Secs. 532, 533, 535, 543, 552.

2. Section 76.309 will be added to the Commission's Rules and will read as follows:

Section 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;

(2) a franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;

(3) any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) the establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability-

(A) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(i) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(ii) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(B) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(C) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(D) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(E) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls- Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(A) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(B) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(C) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(D) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(E) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers-

(A) Notifications to subscribers-

(1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(i) products and services offered;

(ii) prices and options for programming services and conditions of subscription to programming and other services;

(iii) installation and service maintenance policies;

(iv) instructions on how to use the cable service;

(v) channel positions of programming carried on the system;
and,

(vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(2) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(B) Billing-

(i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(C) Refunds- Refund checks will be issued promptly, but no later than either-

(i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) the return of the equipment supplied by the cable operator if service is terminated.

(D) Credits- Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions-

(A) Normal Business Hours- The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(B) Normal Operating Conditions- The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to,

special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(C) Service Interruption- The term "service interruption" means the loss of picture or sound on one or more cable channels.